

House File 777 - Introduced

HOUSE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 167)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to judicial branch practices and procedures
2 including but not limited to adoption petitions, clerk of the
3 district court duties and recordkeeping affecting real estate,
4 and the confidentiality of arrest warrants.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1412HV 82
7 jm/gg/14

PAG LIN

1 1 Section 1. Section 321A.24, subsection 1, paragraph c,
1 2 Code 2007, is amended to read as follows:
1 3 c. The bond constitutes a lien in favor of the state upon
1 4 the real estate so scheduled of any surety, which lien exists
1 5 in favor of any holder of a final judgment against the person
1 6 who has filed the bond, for damages, including damages for
1 7 care and loss of services, because of bodily injury to or
1 8 death of any person, or for damage because of injury to or
1 9 destruction of property, including the loss of use of the
1 10 property, resulting from the ownership, maintenance, use, or
1 11 operation of a motor vehicle after the bond was filed, upon
1 12 the filing of notice to that effect by the department in the
1 13 office of the proper clerk of the district court of the county
1 14 where the real estate is located. An individual surety
1 15 scheduling real estate security shall furnish satisfactory
1 16 evidence of title to the property and the nature and extent of
1 17 all encumbrances on the property and the value of the surety's
1 18 interest in the property, in the manner the judge or clerk of
1 19 the district court approving the bond requires. The notice
1 20 filed by the department shall contain, in addition to any
1 21 other matters deemed by the department to be pertinent, a
1 22 legal description of the real estate scheduled, the name of
1 23 the holder of the record title, the amount for which it stands
1 24 as security, and the name of the person in whose behalf proof
1 25 is so being made. ~~Upon the filing of the notice the clerk of~~
~~1 26 the district court shall retain the notice as part of the~~
~~1 27 records of the court and enter upon the encumbrance book the~~
~~1 28 date and hour of filing, the name of the surety, the name of~~
~~1 29 the record titleholder, the description of the real estate,~~
~~1 30 and the further notation that a lien is charged on the real~~
~~1 31 estate pursuant to the filed notice. From and after the entry~~
~~1 32 of the notice upon the encumbrance book all persons are~~
~~1 33 charged with notice of it.~~
1 34 Sec. 2. Section 600.3, Code 2007, is amended by adding the
1 35 following new subsection:
2 1 NEW SUBSECTION. 4. An adoption petition shall be limited
2 2 to the adoption of one natural person.
2 3 Sec. 3. Section 602.8102, subsection 103, Code 2007, is
2 4 amended by striking the subsection.
2 5 Sec. 4. Section 602.8103, subsection 4, Code 2007, is
2 6 amended by adding the following new paragraph:
2 7 NEW PARAGRAPH. k. Complaints, trial informations, and
2 8 uniform citations and complaints relating to parking
2 9 violations under sections 321.236, 321.239, 321.358, 321.360,
2 10 and 321.361.
2 11 Sec. 5. Section 602.8104, subsection 2, paragraph d, Code
2 12 2007, is amended by striking the paragraph.
2 13 Sec. 6. Section 602.8105, subsection 1, paragraph a, Code
2 14 2007, is amended to read as follows:
2 15 a. For filing and docketing a petition, other than a
2 16 modification of a dissolution decree to which a written

2 17 stipulation is attached at the time of filing containing the
2 18 agreement of the parties to the terms of modification, one
2 19 hundred dollars. In counties having a population of
2 20 ninety-eight thousand or over, an additional five dollars
2 21 shall be charged and collected to be known as the journal
2 22 publication fee and used for the purposes provided for in
2 23 section 618.13. For multiple adoption petitions filed at the
2 24 same time by the same petitioner under section 600.3, the
2 25 filing fee and any court costs for any petition filed in
2 26 addition to the first petition filed are waived.

2 27 Sec. 7. Section 615.1, Code 2007, is amended to read as
2 28 follows:

2 29 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

2 30 A judgment in an action for the foreclosure of a real
2 31 estate mortgage, deed of trust, or real estate contract upon
2 32 property which at the time of judgment is either used for an
2 33 agricultural purpose as defined in section 535.13 or a
2 34 one-family or two-family dwelling which is the residence of
2 35 the mortgagor, or in any action on a claim for rent shall be
3 1 null and void, all liens shall be ~~extinguished~~ unenforceable,
3 2 and no execution shall be issued for any purpose other than as
3 3 a setoff or counterclaim after the expiration of a period of
3 4 two years, exclusive of any time during which execution on the
3 5 judgment was stayed pending a bankruptcy action, from the
3 6 entry thereof. As used in this section, "mortgagor" means a
3 7 mortgagor or a borrower executing a deed of trust as provided
3 8 in chapter 654 or a vendee of a real estate contract.

3 9 Sec. 8. Section 617.10, Code 2007, is amended to read as
3 10 follows:

3 11 617.10 REAL ESTATE == ACTION INDEXED.

3 12 1. When a petition affecting real estate is filed, the
3 13 clerk of the district court where the petition is filed shall
3 14 forthwith index same the petition in an index book ~~to be~~
3 15 ~~provided therefor~~, under the tract number which describes the
3 16 property, entering in each instance the ~~cause~~ case number as a
3 17 guide to the record of court proceedings which affect such the
3 18 real estate. If the petition ~~be is~~ amended to include other
3 19 parties or other lands, ~~same the amended petition~~ shall be
3 20 similarly indexed. When the cause is finally a final result
3 21 is determined in the case, the result shall be indicated in
3 22 ~~said the index~~ book wherever indexed.

3 23 2. As used in this section, "book" means any mode of
3 24 permanent recording, including but not limited to card files,
3 25 microfilm, microfiche, and electronic records.

3 26 Sec. 9. Section 617.13, Code 2007, is amended to read as
3 27 follows:

3 28 617.13 REAL ESTATE IN OTHER COUNTY.

3 29 When any part of real property, the subject of an action,
3 30 is situated in any other county than the one in which the
3 31 action is brought, the plaintiff must, in order to affect
3 32 third persons with constructive notice of the pendency of the
3 33 action, file with the clerk of the district court of the other
3 34 county a notice of the pendency of the action, containing the
3 35 names of the parties, the object of the action, and a
4 1 description of the property in that county affected by the
4 2 action. ~~The clerk shall at once index and enter a memorandum~~
4 3 ~~of the notice in the encumbrance book.~~

4 4 Sec. 10. Section 624.23, subsection 7, Code 2007, is
4 5 amended to read as follows:

4 6 7. If a case file has been sealed by the court, or if by
4 7 law the court records in a case are not available to the
4 8 general public, ~~any judgments entered in the case shall not~~
4 9 ~~become a lien on real property until either the identity of~~
4 10 ~~the judgment creditor becomes public record, or until the~~
4 11 ~~judgment creditor, in a public document in the case in which~~
4 12 ~~judgment is entered, or the court records are made~~
4 13 confidential by the court, the following information shall be
4 14 considered a public record and available for inspection: the
4 15 name of the court, the title of the action, the case number,
4 16 the amount of the judgment, the name of the judgment creditor,
4 17 the affidavit designating the agent and office of the
4 18 creditor, and any full or partial satisfaction of the
4 19 judgment. A judgment creditor shall file with the clerk of
4 20 the district court an affidavit that designates an agent and
4 21 office, consistent with the requirements of section 490.501,
4 22 on which process on the judgment creditor may be served.
4 23 Service may be made on the agent in the same manner as service
4 24 may be made on a corporate agent pursuant to section 490.504.
4 25 An agent who has resigned without designating a successor
4 26 agent and office and who is otherwise unavailable for service
4 27 may be served in the manner provided in section 490.504,

4 28 subsection 2, at the agent's office of record.
4 29 Sec. 11. Section 629.3, Code 2007, is amended to read as
4 30 follows:
4 31 629.3 RECORD OF LIEN.
4 32 ~~It shall be the duty of the clerk of the district court to~~
4 33 ~~record the statements so filed in the encumbrance book and to~~
4 34 ~~enter the same in the lien index.~~ Payments advanced after
4 35 execution has been issued upon the junior lien, shall be added
5 1 to the execution upon receipt, by the sheriff, of a verified
5 2 statement of such advancements and when the redemption period
5 3 has expired the clerk shall release them on the clerk's
5 4 record.

5 5 Sec. 12. Section 639.64, Code 2007, is amended to read as
5 6 follows:
5 7 639.64 AUTOMATIC DISCHARGE == ~~CANCELING ENTRY ON~~
5 8 ~~ENCUMBRANCE BOOK.~~

5 9 If the judgment is rendered in the action for the
5 10 defendant, or, if the action is dismissed by the court, by the
5 11 plaintiff, or, by agreement of the parties, or, if judgment
5 12 has been entered for the plaintiff and has been satisfied of
5 13 record, the attachment shall, subject to the right of appeal,
5 14 automatically be discharged and the property attached, or its
5 15 proceeds, shall be returned to the defendant. ~~If the~~
5 16 ~~attachment has been entered on the encumbrance book, it shall~~
5 17 ~~be the duty of the clerk to cancel such attachment, and in the~~
5 18 ~~entry of cancellation, the clerk shall refer to the entry in~~
5 19 ~~the case showing the clerk's authority to cancel said~~
5 20 ~~attachment.~~

5 21 Sec. 13. Section 654.17, Code 2007, is amended to read as
5 22 follows:

5 23 654.17 RECISION OF FORECLOSURE.

5 24 1. At any time prior to the recording of the sheriff's
5 25 deed, and before the mortgagee's rights become unenforceable
5 26 by operation of the statute of limitations, the judgment
5 27 creditor, or the judgment creditor who is the successful
5 28 bidder at the sheriff's sale, with the written consent of the
5 29 mortgagor may rescind the foreclosure action by filing a
5 30 notice of rescision with the clerk of court in the county in
5 31 which the property is located along with a filing fee of fifty
5 32 dollars. In addition, ~~such person if the original mortgage~~
5 33 ~~and mortgage note are contained in the court file, the~~
5 34 ~~mortgagor shall pay a fee of twenty-five dollars for documents~~
5 35 ~~filed in the foreclosure action which the plaintiff requests~~
6 1 ~~returned to the clerk of the district court. Upon the payment~~
6 2 ~~of the fee, the clerk shall make copies of the original~~
6 3 ~~mortgage and mortgage note for the court file, and return the~~
6 4 ~~original mortgage and mortgage note to the mortgagor.~~

6 5 2. Upon the filing of the notice of rescision, the mortgage
6 6 loan shall be enforceable according to the original terms of
6 7 the foreclosure and the rights of all persons with an interest
6 8 in the property may be enforced as if the foreclosure had not
6 9 been filed. However, any findings of fact or law shall be
6 10 preclusive for purposes of any future action unless the court,
6 11 upon hearing, rules otherwise. The mortgagor shall be
6 12 assessed costs, including reasonable attorney fees, of
6 13 foreclosure and rescision if provided by the mortgage
6 14 agreement.

6 15 Sec. 14. Section 804.29, Code 2007, is amended to read as
6 16 follows:

6 17 804.29 CONFIDENTIALITY. All information filed with the
6 18 court for the purpose of securing a warrant for an arrest,
6 19 including but not limited to a citation and affidavits, shall
6 20 be a confidential record until such time as a peace officer
6 21 has made the arrest and has made the officer's return on the
6 22 warrant. During the period of time that information is
6 23 confidential, ~~it the warrant shall be sealed by the court and~~
6 24 ~~the information contained therein in the warrant shall not be~~
6 25 ~~disseminated to any person other than a peace officer,~~
6 26 ~~employee of a county attorney's office, magistrate, or another~~
6 27 ~~court employee, in the course of official duties.~~

6 28 Sec. 15. Sections 626.9, 626.20, 639.28, 639.70, and
6 29 674.11, Code 2007, are repealed.

6 30 EXPLANATION

6 31 This bill relates to judicial branch practices and
6 32 procedures including but not limited to adoption petitions,
6 33 clerk of the district court duties and recordkeeping affecting
6 34 real estate, and the confidentiality of arrest warrants.

6 35 The amendment to Code section 600.3 requires a petitioner
7 1 to file a separate adoption petition for each person being
7 2 adopted.

7 3 The amendment to Code section 602.8103 permits the clerk of

7 4 the district court to destroy, without prior court approval or
7 5 reproduction, a complaint, trial information, or uniform
7 6 citation and complaint related to a parking violation.
7 7 The amendment to Code section 602.8104 eliminates the
7 8 requirement that the clerk of the district court keep an
7 9 encumbrance book that contains a statement of the levy of each
7 10 attachment on real estate entered by the sheriff. The
7 11 amendments to Code sections 321A.24, 602.8102, 617.13, 629.3,
7 12 and 639.64, and the repeal of Code sections 626.9, 626.20,
7 13 639.28, and 639.70, conform the Code sections to the
7 14 elimination of the encumbrance book in Code section 602.8104.
7 15 The amendment to Code section 602.8105 waives the filing
7 16 and docketing fee and any court costs for multiple adoption
7 17 petitions filed at the same time by the same petitioner under
7 18 Code section 600.3.
7 19 The amendment to Code section 615.1 provides that a
7 20 judgment in an action for the foreclosure of a real estate
7 21 mortgage is "unenforceable" after the expiration of two years,
7 22 unless a bankruptcy is filed. Current law provides that a
7 23 judgment in an action for foreclosure of a real estate
7 24 mortgage is "extinguished" after two years unless a bankruptcy
7 25 is filed.
7 26 The amendment to Code section 617.10 permits the clerk of
7 27 the district court to keep the index of petitions affecting
7 28 real estate with card files, microfilm, microfiche, or in an
7 29 electronic format. The amendment to Code section 617.10 also
7 30 enhances the readability of the section.
7 31 The amendment to Code section 624.23 concerns the
7 32 disclosure of certain court records relating to judgment liens
7 33 when the case filed has been sealed or made confidential.
7 34 Under the bill, the following records are considered a public
7 35 record even if the court file has been sealed or made
8 1 confidential: the name of the court, the title of the action,
8 2 the case number, the amount of the judgment, the name of the
8 3 judgment creditor, the affidavit designating the agent and
8 4 office of the creditor, and any full or partial satisfaction
8 5 of the judgment.
8 6 The amendment to Code section 654.17 relates to the
8 7 rescission of a foreclosure action. Under the bill, if a
8 8 foreclosure action is rescinded by a judgment creditor, and
8 9 the original mortgage and mortgage note are in the court file,
8 10 the mortgagor shall pay a \$25 fee to the clerk of the district
8 11 court prior to receiving the original mortgage and mortgage
8 12 note from the clerk.
8 13 The amendment to Code section 804.29 enhances the
8 14 readability of the section.
8 15 Code section 674.11 is repealed, eliminating the provision
8 16 requiring the clerk of the district court to keep a
8 17 change-of-name record in regard to changes of legal names by
8 18 petitions to the court.
8 19 LSB 1412HV 82
8 20 jm:rj/gg/14